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United States Senate

WASHINGTON, DC 20510-5004

April 16, 2001

MICHAEL ENZI
WYOMING

COMMITTEES:

Banking, Housing, and Urban Affairs
Labor and Human Resources
Small Business
Special Committee on Aging

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Mr. Chairman:

Enclosed please find a copy of an email from Kurt Browall, President of KTRZ radio in Riverton, Wyoming. He has asked me to forward to the Commission a copy of Rick Murphy's filing regarding the Commission's decision on satellite digital audio radio service. Please give the issues raised by Mr. Murphy's and Mr. Browall's letters your full consideration as the Commission goes forward during the rollout of SDARS providers.

If you have any questions about this request, please do not hesitate to contact my office.

Sincerely,


Michael B. Enzi
United States Senator

MBE: mt

RECEIVED

JUN - 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

M. B. Enzi
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Mass Media



International Bureau

Federal Communications Commission
Washington, DC 20554202-418-0437
202-418-2818 (fax)

May 11, 2001

The Honorable Michael B. Enzi
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510-5004

Dear Senator Enzi:

Thank you for your letter on behalf of your constituent Kurt Browall. Chairman Powell has asked me to respond to your inquiry on his behalf. Mr. Browall is concerned about the effect that a new satellite service, Satellite Digital Audio Radio (SDARS), will have on small market terrestrial radio stations. He has included a copy of comments filed by Rick L. Murphy in MM Docket No. 00-244, Definition of Radio Markets addressing this issue.

Mr. Murphy's comments will be included in the record of the ongoing "radio market" proceeding. The Commission's Mass Media Bureau is reviewing all comments filed in this docket and is preparing a Report and Order for Commission consideration.

With respect to Mr. Browall's comments, the Commission has, in the context of adopting service rules for SDARS, considered its potential impact on terrestrial broadcasters. In its 1997 Order, the Commission concluded that "...although healthy satellite DARS systems are likely to have some adverse impact on terrestrial radio audience size, revenues, and profits, the record does not demonstrate that licensing satellite DARS would have such a strong adverse impact that it threatens the provision of local radio service." (Establishment of Rules and Policies for the Digital Audio Satellite Service in the 2310-2360 MHz Frequency Band, 12 FCC Rcd 5754, 5768 (1997)). The Commission went on to say that it would "...continue to monitor and evaluate the potential and actual impact of satellite DARS, particularly in small radio markets, so that we will be able to take any necessary action to safeguard the important service that terrestrial radio provides." (Id. At 5769). At this time, neither SDARS licensee has begun service to the public so it is impossible to determine what, if any, impact they will have on terrestrial radio broadcasting. We will evaluate future developments as both services are introduced.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Abelson".
Donald Abelson
Bureau Chief

Date: 2/27/01 12:40 PM
Sender: KBrowall@tcinc.net
To: senator, Representative Barbara Cubin <barbara.cubin@mail.house.gov>; Senator Craig Thomas <craig@thomas.senate.gov>
Priority: Normal
Subject: Please review this...[Fwd.]

Dear Representative Cubin, and Senators Enzi and Thomas:

One of the most recent "chris'es" [plural] about ready to descent on small market radio stations in your state is the launch of 200 new satellite-delivered, no-commercial "radio stations" authorized by the FCC a few years back. The impact will be felt by every existing small-market station in the country, and in Wyoming... I have a real concern about the viability of our business--a matter of months. We have five commercial radio stations in Fremont County. This is going to splinter the audience up with 205 sources, rather than 5.

As you know, we pay our bills by selling advertising. If you were an advertiser, would you see our value enhanced... or reduced... with this many new signals suddenly in homes and cars? I see it as a crisis. In just a few months.

I AM FORWARDING A FILING that has been given to the FCC's new Chairman and his colleagues. I would ask only that you express your interest in the filing, ask for reconsideration before this insane project is born later this year, and see if you don't agree the Commission has violated a number of Federal laws and regulations in creating this Pandora's box before it happens.

Our front door is always open for each of you. We try to involve in the local things we do, such as Close Up fund-raisers and advance publicity for your local visits.

If you find no local radio stations in existence on your visits starting next falls in Lander and Riverton, unlimited numbers of new audio services from above... with no requirements to serve their local communities... will be the explanation. I hope someone in your office can and will demand that the FCC not give this filing short-shrift. It's legitimate, timely, and there is a time bomb ticking in the background for those of us who are small businesses, small employers, and who serve your constituents to the best of our ability in today's highly-regulated broadcasting industry.

Thanks.

Kurt Browall,
General Manager
KTRZ, Riverton/Lander
Wind River Communications, Inc.

cc Joe Kenney, Fremont Broadcasting
Jerry Edwards, Edwards Publications, KTAK/KVOW

--
Kurt Browall, General Manager
KTRZ Radio
P.O. Box 808
Riverton, Wyoming 82501 USA
(307) 856-2922
(307) 856-7552 FAX

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of

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Definition of Radio Markets
MM Docket No. 00-244

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TO: The Commission
COMMENTS

Rick L. Murphy[1], by its attorneys, hereby submits his comments in response to the Commission's Notice of Proposed Rule Making, FCC 00-427, MM Docket No. 00-244, re-leased December 13, 2000 ("NPRM"). [2] Mr. Murphy advocates a modification of the Commission's definition of a radio market for radio ownership purposes to account for all radio services available in a particular market, including all satellite digital audio radio service channels ("SDARS Channels"). In support whereof, the following is respectfully submitted for the Commission's consideration:

1. Once launched, SDARS Channels will compete with existing terrestrial radio stations for listeners and advertising revenue, as the Commission has duly acknowledged. See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, 12 FCC Rcd 5754 (1997). The current licensees of SDARS, XM Satellite Radio and Sirius Satellite Radio, each plan to provide radio programming on 200 channels (100 channels each). See XM Satellite Radio's website at: <http://www.xm-radio.com/js/whatisxm/whatisxm.asp>; Sirius Satellite Radio's website at: http://www.cdradio.com/nonflash_site/default.htm. This means that in any given radio market, existing local terrestrial radio stations will have increased competition from 200 SDARS Channels.

2. Pursuant to Section 202(b)(1) of the Telecommunications Act of 1996 and under the Commission's current radio ownership rules (47 C.F.R. 73.3555), no one entity may own 100 radio stations. While the Commission did not seek further comments concerning satellite DARS in its NPRM, there is an obvious inconsistency between the terrestrial radio ownership limits and the non-existent limits on the number of SDARS Channels available in a particular radio market. While current licensees of SDARS are not restricted by any limits on the number of SDARS Channels that they may provide, licensees of terrestrial radio stations are limited to the ownership of eight commercial stations in a radio market with 45 or more

commercial stations. Fairness dictates that the Commission resolve this inconsistency.

3. Further compounding the inconsistency, there are no restrictions on the ownership of SDARS channels by terrestrial broadcasters.

For instance, Clear Channel Communications, Inc. is named as a strategic investor in XM Satellite Radio (See XM Satellite Radio's website at: <http://www.xmsr.com/js/corpinfo/ownership.asp>). Clear Channel Communications, Inc. is an attributable owner of approximately 1,170 radio stations nationwide, including combinations of multiple stations in 47 of the top 50 markets (See Clear Channel Communications, Inc.'s website at: <http://www.clearchannel.com/radio/index.html>). Once SDARS Channels go on the air, stations in markets competing with Clear Channel Communications, Inc. stations will find themselves not just competing with Clear Channel Communications, Inc. as an entity in the market owning up to eight stations, but rather with Clear Channel Communications, Inc. as an entity with between 100 and 108 radio stations due to its attributable ownership in both terrestrial and SDARS Channels stations.

4. If terrestrial radio stations are to be given a fighting chance to compete with SDARS Channels, the Commission must do all it can to place owners of terrestrial radio stations on as much of an equal footing as possible with owners of SDARS Channels. Given that the Commission is restricted by the statutory ownership limits set forth in Section 202(b)(1) of the Telecommunications Act of 1996, the Commission must count all SDARS Channels available in a particular radio market as stations within the market for purposes of determining how many radio stations are in that market. Although this may not completely resolve the inconsistency between the ownership limits on terrestrial radio stations and the non-existent limits on SDARS Channels, it will at least permit more radio markets to be classified as a radio market with 45 or more commercial radio stations, thereby allowing one entity to own or operate up to eight commercial radio stations in that market. 47 U.S.C. 202(b)(1)(A); 47 C.F.R. 73.3555(a)(1)(i). Increasing the number of terrestrial radio stations that an entity may own will permit that entity to benefit from the economies of scale by, for example, consolidating staff and using common studios. This in turn will permit that entity to apply the saved resources towards improving and/or adding more local programming to compete against the imminent institution of dual 100 channel service from SDARS channels.

WHEREFORE, for the foregoing reasons, the Commission should count all satellite digital audio service channels available in a particular radio market as stations within the market for purposes of determining how many radio stations are in that market.

Respectfully Submitted,

RICK L. MURPHY

By: _____

Joh

n
F. Garziglia

Patricia M. Chuh

Its Attorneys

PEPPER & CORAZZINI, L.L.P.

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February 26, 2001

PMC/JFG/ljs/jlt

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[1] Mr. Murphy is the licensee of a group of radio stations in the Lake
Havasu City, Arizona area.

[2] The NPRM established February 12, 2001 as the deadline for filing
comments. This deadline was extended to February 26, 2001 by the
Commission. Order Extending Time, DA 01-71, MM Docket No. 00-244, released
January 10, 2001. Therefore, the instant comments are timely filed.

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